

1. Claimant: All Claimants
2. Name of Witness: S. Malik
3. No of Statement: 4
4. Attachments: 'SM19', 'SM20', 'SM21', 'SM22'
5. Date: 12 July 2010

IN THE HIGH COURT OF JUSTICE

Claim No.

HQ08X01180

QUEEN'S BENCH DIVISION

HQ08X01416

HQ08X03220

HQ08X01686

BETWEEN

- (1) BISHAR AL RAWI
- (2) JAMIL EL BANNA
- (3) RICHARD BELMAR
- (4) OMAR DEGHAYES
- (5) BINYAM MOHAMMED
- (6) MARTIN MUBANGA

Claimants

- and -

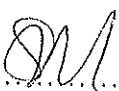
- (1) THE SECURITY SERVICE
- (2) THE SECRET INTELLIGENCE SERVICE
- (3) THE ATTORNEY GENERAL
- (4) THE FOREIGN AND COMMONWEALTH OFFICE
- (5) THE HOME OFFICE

Defendants

FOURTH WITNESS STATEMENT OF SAPNA MALIK

I, Sapna Malik, of Leigh Day & Co of 25 St John's Lane, London EC1M 4LB, will say as follows:

1. I am a Partner at Leigh Day & Co with conduct of this matter on behalf of the Fifth Claimant, Binyam Mohamed. I make this statement in support of the applications for further information and disclosure set out in paragraph 1 of the Skeleton Argument served on behalf of the First to Fifth Claimants, and in response to the proposal in the Defendants' draft order

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of 7 July 2010 that a mediation be held in mid-September to attempt to resolve these claims '*with the greatest expedition possible*'. This statement is made from my own knowledge unless otherwise stated. Where I refer to matters of information or belief, I have indicated this together with the sources of such matters of information and belief.

2. The Claimants welcome the prospect of a relatively prompt resolution of their claims, particularly in light of the Defendants' previously held position that the process of providing disclosure alone would take several years.
3. In order for mediation to be meaningful, however, the Claimants' representatives must be in the fullest position possible to advise their clients on the relative strengths and weaknesses of their claims and, conversely, the strengths and weaknesses of the Defendants' case.
4. Such an assessment is made very difficult at this time by the limited nature of the disclosure provided to date, the heavy redaction of the handful of potentially relevant documents that have been provided, and the refusal by the Defendants to provide meaningful answers to the Claimants' requests for further information.

Overview of Disclosure Provided to Date:

5. At paragraph 50 of his 11th Witness Statement served on 8 July, David Mackie states that almost 500,000 documents have now been identified by the Defendants as potentially relevant to the litigation, that over 50,000 of these have already been logged and the majority of those already reviewed for relevance. Yet between them, the Claimants have to date received just over 900 documents from all five Defendants.
6. The limited number of documents provided by the Defendants might be more understandable if it were clear that they were attempting to provide the Claimants with only the most relevant documents in their possession, going to the core issues of dispute between the parties. Unfortunately,

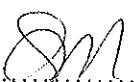
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despite repeated requests by the Claimants for disclosure to be targeted to a select few core issues, the Defendants have continued to serve batch after batch of disclosure that includes significant numbers of documents either already in the public domain (such as media files and parliamentary debates), already in the possession of the Claimants (such as letters from the Claimants' own solicitors), duplicates or documents of minimal relevance to the proceedings.

7. At the same time, the Defendants have actively resisted disclosure of some of the key documents of obvious relevance to the litigation, such as the Guidance provided to SIS and SyS agents until ordered to do so. The disclosure provided on 9 July 2010 has been redacted, and a PII certificate has been issued in this regard, which will require close consideration.
8. The Guidance to security services staff is one key area where this has been the case, but it is not the only one. There are a number of other documents whose existence has been indicated either in related court proceedings or by the Intelligence and Security Committee (ISC) or in the accounts provided by the Claimants and set out in the pleadings that are clearly relevant to these proceedings and that have not been disclosed to date. I set out some examples below:
 - a. Documentation relating to the full extent of and background to the meetings and telephone conversations between Mr Al Rawi, Mr El Banna and the Security Services in the United Kingdom (see e.g. Al Rawi Particulars of Claim paragraphs 19 – 29; Defence paragraph 22-25);
 - b. Documentation concerning the apparent decision not to provide consular access to either Mr Al Rawi or Mr El Banna and the decision not to "press for" consular access in relation to Mr Begg and Mr Belmar (see e.g. Al Rawi Particulars of Claim paragraphs

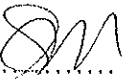
48-50, 58, 135; Al Rawi Defence paragraph 42; Belmar Defence paragraph 44);

- c. Documentation relating to Mr Yousif and relating to his discussions with United Kingdom officials culminating in (and following) his last minute decision not to travel with Mr El Banna and Mr Al Rawi to The Gambia (see e.g. Al Rawi Particulars of Claim paragraph 39; Defence paragraph 32);
- d. Documentation (including internal Security Services documentation) relating to the authority or otherwise of Security Service agents to seek to recruit detainees as informers as a condition for the United Kingdom intervening on their behalf (see e.g. Al Rawi Particulars of Claim 134.4-134.5, 134.11, 203, 276.8-9; Belmar Defence 34, 35; Begg Defence 39.7 & 39.8; Deghayes Defence 33-37);
- e. The information from 'debriefings' of the Fifth Claimant, Binyam Mohamed, supplied to the UK authorities by the United States identified by the High Court at paragraph 30(v) of its amended judgment of 31 July 2009 [2008] EWHC 2048 (Admin), which states that *'further information from debriefings of BM was supplied to the UK authorities by the United States authorities on 14 November 2003, 14 January 2004 and 15 March 2004'*. These documents potentially go to the heart of the Defendants' knowledge of Mohamed's whereabouts and treatment after he was transferred from Pakistan by the US in July 2002;
- f. The documents referred to by the Court at paragraph 35A of the same judgment, which states that *'It is clear from documents subsequently supplied to us that Witness B visited Morocco once in November 2002 and twice in February 2003. As no information about these visits was available at the hearing, Witness B was not questioned in either the open or closed sessions about these visits'*. These documents also go directly to the issue of the Defendants'

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knowledge of the Mohamed's whereabouts during the relevant period and are particularly relevant to the adequacy of the Defendants' Response to the Claimants' Request for Further Information. They are difficult to reconcile with the contention at paragraph 46 of that document that *'it is not admitted that any Minister, officer or official of the Defendants knew or believed that Mr Mohamed was detained in Morocco at any time during the alleged detention in Morocco or at any material time thereafter'*;

- g. The minutes or record of the meeting of Permanent Secretaries on 31 January 2002, referred to at paragraph 58 of the ISC Report of 31 March 2005, which states that at that meeting *'anecdotal reports... of 'undue exuberance' by American personnel at Guantanamo Bay'* were mentioned;
 - h. The report of the SIS Officer in March 2002 referred to at paragraph 52 of the ISC Report of 31 March 2005, which states that *'an SIS officer in Afghanistan was told ***[redacted]. The SIS officer returned the matter back to London but no action was taken either locally or by the SIS in London...we were told this was because it was regarded as an isolated incident'*;
 - i. The report by the SIS officer in April 2002 referred to at paragraph 53 of the ISC Report of 31 March 2005, which states that *'an SIS officer was present at an interview conducted by the US military of a detainee in Afghanistan who complained of time in isolation and who had previously had a nervous breakdown....'*
9. For the avoidance of doubt the Claimants also do not accept that the stay of certain Claimants' claims (e.g. that of Mr Begg) relieves the Defendants of their obligation to give disclosure of documentation relating to them and relevant to the claims of the active Claimants. As the Claimants have made clear their case is that they were each the victims of a consistent pattern of unlawful conduct. For this purpose the evidence relating to the

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stayed Claimants is relevant and disclosable for the purposes of a fair determination of the active Claimants' claims.

Redaction of Documents Provided:


10. As has been previously highlighted at paragraphs 33-39 of the Fourth Witness Statement of Louise Christian dated 12 April 2010 and in the Claimants' skeleton argument prior to the last hearing, the excessive redaction of many of the documents that have been disclosed has also made it very difficult to evaluate their utility and relevance to the claims.
11. I exhibit to this witness statement marked '**SM19**' just two further examples, discussed below, which illustrate this difficulty.

a) Document 1: Report by SIS Officer:

This document comprises a single page that is entirely redacted aside from the date. It is described on the accompanying schedule served on 5 May 2010 as an internal 'Report by SIS officer' dated 10 January 2002.

Insofar as it is possible to make any judgment at all based on this very limited information, it is presumed that this document may be the report referred to at paragraph 46 of the Intelligence & Security Committee's Report of 1 March 2005, which states that:

'On 10 January 2002, the first day that the SIS had access to US-held detainees, an SIS officer conducted an interview of a detainee. Whilst he was satisfied that there was nothing during the interview which could have been a breach of the Geneva Conventions, he reported back to London his...observations on the circumstances of the handling of [the] detainee by the US military before the beginning of the interview....'

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The ISC report goes on to note that 'these comments raised concerns about the US treatment of detainees' which led to the issuing on 11 January 2002 of instructions to all SIS and SyS officers in Afghanistan regarding the treatment of detainees.

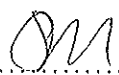
If the document disclosed is the report that led to the issuing of the 2002 Guidance, it is clearly highly relevant to liability and to assessing the strength of the Claimants' cases. In its current form, however, the document cannot even be identified as this report and is effectively useless.

b) Document 2: SyS Telegram 'Binyamin Ahmed Mohammed'

This document comprises 33 pages, of which 27 are completely redacted. It is described on the accompanying schedule served on 10 February 2010 as simply: 'SyS Telegram, 'Binyamin Ahmed Mohammed – Debriefs' dated 15 May 2002.

It is presumed that this document is the briefing note prepared for Witness B prior to his visit to Pakistan to interview Binyam Mohamed on 17 May 2002, referred to at paragraph 17 of the High Court's approved judgment of 31 July 2009 with amendments [2008] EWHC 2048 (Admin) as follows:

'On 17 May 2002 an officer of the SyS, who gave evidence before us as Witness B, travelled to Pakistan and interviewed BM at an interviewing facility in Karachi. Before going, he reviewed information about BM. There was a dispute at the hearing as to what information he saw in the course of that review. Since that hearing, further documents disclosed to us make clear that a composite document was prepared for sending to Witness B for his attention in Karachi; it contained a detailed briefing package which included questions he should ask of BM and details of the reports provided by the United States authorities....'

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Following the decision by the Court of Appeal on 10 February 2010 to release the details of a summary of the US Reports on Mohamed's treatment, showing that he had been subjected to a regime of sleep deprivation, threats and inducements of which the British Security Services were informed, there can be no reason for such substantial redaction of information already in the public domain.

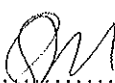
Relevant Disclosure Provided in Recent Disclosure Batches

12. A handful of key documents that have just been produced for inspection in the past few weeks demonstrate how even a small amount of disclosure can make a significant difference to how the merits of these claims are assessed.

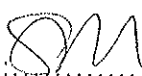
13. I exhibit to this witness statement marked '**SM20**' the bundle of documents disclosed in relation to the sixth Claimant, Martin Mubanga in June 2010 (and subsequently disclosed to the other Claimants on 8 July 2010), and which form the basis of an application for summary judgment. These documents appear to show intervention by the Prime Minister's office and Security Services in 2002 to prevent consular access by the FCO to Mr Mubanga in Zambia on the basis that, had they done so, it would have ensured he was handed over to the UK authorities.

14. I further exhibit to this witness statement marked '**SM21**' a number of documents disclosed by the Home Office on 1 July 2010, which also go directly to the Defendants' liability in these cases. These include:

- a. A heavily redacted Home Office briefing note from 12 April 2002 (incorrectly dated 2001) which, discussing the level of protection to be afforded to British citizens detained at Guantanamo Bay, notes that the FCO wanted to press for legal access to the detainees but were '*overruled by No. 10*'.

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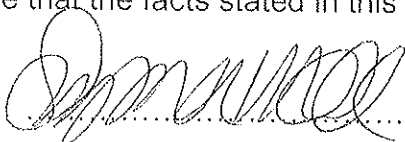
- b. An FCO document from 10 January 2002 and sent to Sir Christopher Meyer which notes in relation to UK nationals captured by US Forces in Afghanistan '*...the transfer of UK nationals...to the base at Guantanamo is the best way to meet our counter-terrorism objectives by ensuring they are securely held*'.
 - c. A Home Office manuscript by Bob Whalley dated 14 January 2002 (a time when Security Services officers were interviewing British detainees captured by the US in Afghanistan), noting what appear to be the interview conditions for an unidentified detainee. The note states '*Interview conditions: cold beaten up*' and goes on to include what appear to be a range of options including '*collusive extradition*'.
 - d. A Home Office document dated 26 February 2010 noting that following a meeting with the US regarding UK nationals held at Guantanamo that '*the meeting agreed that UK should not be in any hurry to take back the detainees, though FCO was quiet on this point*'.
15. Finally, I exhibit to this witness statement marked '**SM22**' the Guidance documents disclosed by the Defendants on 9 July 2010. These documents indicate that the guidance issued to SyS and SIS staff on 11 January 2002 was significantly flawed, for instance containing no list of forbidden techniques and stating overtly to security services officers that '*the law does not require you to intervene*' to prevent abuses of prisoners, in stark contrast to the recent Consolidated Guidance published last week, which states that Intelligence Officers knowing or believing torture might take place should try to prevent it occurring '*unless in so doing you might make the situation worse*'.

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16. All of these documents underline the vital importance of both meaningful responses to the Claimants' Requests for Further Information and accompanying targeted disclosure before any mediation takes place.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed  Dated 12/07/10
Sapna Malik

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